

AMENDED IN SENATE APRIL 1, 2013

SENATE BILL

No. 516

Introduced by Senator Steinberg

February 21, 2013

An act to amend Sections 9998.1, 9998.6, and 9998.8 of, to add Sections 9998.1.5, 9998.2.5, 9998.10, and 9998.11 to, and to repeal and add Section 9998.2 of, the Business and Professions Code, relating to ~~human trafficking~~ foreign labor contractors.

LEGISLATIVE COUNSEL'S DIGEST

SB 516, as amended, Steinberg. ~~Human trafficking.~~ Foreign labor contractors: registration.

Existing federal law permits certain aliens to engage in employment in the United States under specified conditions. Existing state law regulates the services of foreign labor contractors, as defined, with regard to contracts, recruitment procedures and representations, and information as to terms and conditions of employment. Existing law provides that any person who violates the latter provisions is guilty of a misdemeanor. Existing law also permits any person aggrieved by a violation of these provisions to bring an action for injunctive relief or damages, or both, and authorizes recovery of damages, costs, and reasonable attorney's fees, in an amount not less than \$500, if the aggrieved person prevails on the action.

Under existing state law, the Division of Labor Standards Enforcement in the Department of Industrial Relations, under the direction of the Labor Commissioner, enforces and administers the licensing and supervision of farm labor contractors.

This bill would require a foreign labor contractor to register with the Labor Commissioner and pay a specified fee, upon satisfying

specified conditions. The bill would require the commissioner to enforce and administer the registration and supervision of foreign labor contractors. The bill would prohibit a person from entering into an agreement for the services of a foreign labor contractor that is not registered with the commissioner. The bill would also require foreign labor contractors to disclose specified information and deposit with the commissioner a surety bond in a specified amount, for payment of any amount adjudicated against the foreign labor contractor, as a condition of registration, as specified. The bill would further require persons using the services of foreign labor contractors to obtain foreign workers to disclose specified information and deposit with the commissioner a surety bond in a specified amount, for payment of any amount adjudicated against that person, as specified.

The bill would require a foreign labor contractor to disclose in writing to each foreign worker who is recruited for employment certain information, as specified. The bill would prohibit a foreign labor contractor and its agent from assessing a fee or cost to a foreign worker for employment services, as defined. The bill would also prohibit charging a foreign worker with any costs or expenses not customarily assessed against similarly situated workers, and would limit the amount of housing costs charged to the foreign worker to the market rate for similar housing. The bill would prohibit requiring a foreign worker to pay any costs or expenses prior to commencement of work.

The bill would authorize a civil penalty for violations of these provisions, and would authorize the commissioner or a person aggrieved by a violation of these provisions to bring an action for injunctive relief or damages, or both, and would authorize recovery of damages, costs, and reasonable attorney's fees, as specified, including enforcement of liability against the bonds deposited with the commissioner. The bill would provide for the joint and several liability of foreign labor contractors and persons using the foreign labor contractors' services. The bill would further authorize a person who, upon information and belief, claims a violation of these provisions has been committed to bring a civil action for injunctive relief on behalf of the general public and, upon prevailing, recover reasonable attorney's fees and costs. Because this bill would expand the scope of the provisions regulating foreign labor contractors, a violation of which is a misdemeanor, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state.

Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

~~Existing law, as amended by Proposition 35, the Californian's Against Sexual Exploitation Act, an initiative measure approved by the voters at the November 6, 2012, statewide general election, provides that any person who deprives or violates the personal liberty of another with the intent to obtain forced labor or services is guilty of human trafficking and is punishable by imprisonment in the state prison, as specified, and by a fine of not more than \$500,000.~~

~~This bill would express the intent of the Legislature to enact legislation aimed at eradicating slavery and human trafficking.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
State-mandated local program: ~~no~~-yes.

The people of the State of California do enact as follows:

1 *SECTION 1. The Legislature finds and declares all of the*
2 *following:*

3 *(a) Foreign labor contractors are increasingly relied upon to*
4 *facilitate the movement of labor from one country to another.*
5 *California is the leading destination state in the United States for*
6 *temporary foreign workers. As of January 2011, there were*
7 *130,000 temporary foreign workers in California.*

8 *(b) While many foreign labor contractors behave ethically and*
9 *are engaged in lawful conduct, some foreign labor contractors*
10 *are often complicit with, or are directly involved in, the illegal*
11 *trafficking of foreign workers.*

12 *(c) Unscrupulous foreign labor contractors often charge*
13 *exorbitant fees for their services, force foreign workers into debt*
14 *bondage, falsify documents, and deceive foreign workers about*
15 *the terms and conditions of work, thereby increasing their*
16 *vulnerability to human trafficking.*

17 *(d) The incidence of known human trafficking cases involving*
18 *foreign labor recruiters is increasing dramatically in the United*
19 *States. Stricter regulation of foreign labor contractors will ensure*
20 *the integrity of the Californian economy, which is undermined*
21 *when unregulated persons conspire to fraudulently deceive foreign*
22 *workers about the terms and conditions of work.*

1 (e) *California already regulates farm labor contractors through*
2 *a comprehensive licensing system and provides some oversight of*
3 *the activities of foreign labor contractors. This bill expands*
4 *regulation of the activities of foreign labor contractors by the*
5 *following:*

6 (1) *Requiring foreign labor contractors to register with the*
7 *appropriate state agency.*

8 (2) *Requiring disclosure of the use of foreign labor contractors,*
9 *and their agents, by persons seeking to employ foreign workers.*

10 (3) *Imposing penalties on a person using an unregistered foreign*
11 *labor contractor to obtain foreign workers or employees.*

12 (4) *Expanding the remedies available to foreign workers*
13 *aggrieved by the actions of foreign labor contractors and those*
14 *acting in concert with them.*

15 SEC. 2. *Section 9998.1 of the Business and Professions Code*
16 *is amended to read:*

17 9998.1. The following definitions are applicable to this chapter:

18 (a) “Person” includes any natural person, company, firm,
19 partnership, or joint venture, association, corporation, limited
20 liability company, or sole proprietorship.

21 (b) “Compensation” means all forms of remuneration or
22 consideration for the provision of employment services to foreign
23 workers by a foreign labor contractor.

24 (c) “Employment services” includes, but is not limited to,
25 procuring employment, marketing labor, *processing visa*
26 *applications*, or otherwise arranging the employment or
27 transportation, housing, and other living accommodations for
28 foreign workers either on behalf of those *foreign* workers or on
29 behalf of another ~~party~~ *person, including services performed*
30 *outside the United States.*

31 (d) “Foreign worker” means any person seeking employment
32 who is not a United States citizen but who is authorized by the
33 federal government to work in the United States, including a person
34 who engages in temporary nonagricultural labor pursuant to Section
35 1101(a)(15)(H)(ii)(b) of Title 8 of the federal Immigration and
36 Nationality Act.

37 (e) “Foreign labor contractor” means any person who for
38 compensation agrees to assist in securing or who actually secures
39 for or provides employment services to foreign workers.

1 SEC. 3. Section 9998.1.5 is added to the Business and
2 Professions Code, to read:

3 9998.1.5. (a) On and after July 1, 2015, a person acting as a
4 foreign labor contractor shall register with the Labor
5 Commissioner in accordance with the terms and procedures for
6 registration established by the commissioner by January 1, 2015.
7 On and after August 1, 2015, the commissioner shall post on its
8 Internet Web site the names and contact information for all
9 registered foreign labor contractors and a list of the names and
10 contact information for any foreign labor contractors denied
11 renewal or registration.

12 (b) The Labor Commissioner may not register a person to act
13 as a foreign labor contractor, and may not renew a registration,
14 until all of the following conditions are satisfied:

15 (1) The person has executed a written application in a form
16 prescribed by the commissioner, subscribed and sworn to by the
17 person, and containing all of the following:

18 (A) A statement by the person of all facts required by the
19 commissioner concerning the applicant's character, competency,
20 responsibility, and the manner and means by which the person
21 proposes to conduct operations as a foreign labor contractor if
22 registered.

23 (B) The names and addresses of all persons, except bona fide
24 employees on stated salaries, financially interested, either as
25 partners, associates, or profit sharers, in the proposed operation
26 as a foreign labor contractor, together with the amount of their
27 respective interests.

28 (C) A declaration consenting to the designation by a court or
29 the commissioner as an agent available to accept service of
30 summons in any action against the registrant, if the registrant has
31 left the jurisdiction in which the action is commenced or otherwise
32 has become unavailable to accept service.

33 (2) The commissioner, after investigation, is satisfied as to the
34 character, competency, and responsibility of the person.

35 (3) (A) The person has deposited with the commissioner a surety
36 bond in an amount based on the size of the person's annual gross
37 receipts from operations as a foreign labor contractor, as follows:

38 (i) For gross receipts up to five hundred thousand dollars
39 (\$500,000), a twenty-five-thousand-dollar (\$25,000) bond.

1 (ii) For gross receipts of five hundred thousand dollars
2 (\$500,000) to two million dollars (\$2,000,000), a
3 fifty-thousand-dollar (\$50,000) bond.

4 (iii) For gross receipts greater than two million dollars
5 (\$2,000,000), a seventy-five-thousand-dollar (\$75,000) bond.

6 (B) If the foreign labor contractor has been the subject of a final
7 judgment in a year in an amount equal to that of the bond required,
8 that contractor shall be required to deposit an additional bond
9 within 60 days. The bond shall be payable to the people of the
10 State of California and shall be conditioned on the foreign labor
11 contractor complying with all the terms and provisions of this
12 chapter and paying all damages occasioned to any person by
13 failure to do so, or by any violation of this chapter, or false
14 statements or misrepresentations made in the registration process.
15 The bond shall also be payable for interest on wages and for any
16 damages arising from violation of applicable orders of the
17 Industrial Welfare Commission, and for any other monetary relief
18 awarded to a foreign worker as a result of a violation of law by
19 the foreign labor contractor.

20 (4) The person has paid to the commissioner a registration fee
21 of five hundred dollars (\$500) plus a filing fee of ten dollars (\$10).

22 (c) The commissioner may not register a person as a foreign
23 labor contractor, if the person was found by a court, the Secretary
24 of Labor, or the commissioner to have violated any of the following
25 provisions:

26 (1) The federal Trafficking Victims Protection Act of 2000
27 (Division A, Public Law 106-386), as amended.

28 (2) Sections 1682 to 1699, inclusive, of the Labor Code.

29 (3) Section 236.1 of the Penal Code.

30 (4) An applicable guest worker program.

31 SEC. 4. Section 9998.2 of the Business and Professions Code
32 is repealed.

33 ~~9998.2. Every contract for the provision of employment~~
34 ~~services to foreign workers shall be written in the primary language~~
35 ~~of the foreign worker and shall include all material terms including,~~
36 ~~but not limited to, any and all compensation or consideration to~~
37 ~~be provided to the foreign worker in exchange for that worker's~~
38 ~~labor or services, any wages, housing, transportation, other living~~
39 ~~accommodations, and other benefits which are to be provided.~~

1 *SEC. 5. Section 9998.2 is added to the Business and Professions*
2 *Code, to read:*

3 9998.2. (a) *On and after July 1, 2015, a person using the*
4 *services of a foreign labor contractor to procure foreign workers*
5 *or employees shall disclose this information to the Labor*
6 *Commissioner in accordance with the terms and procedures*
7 *established by the commissioner by January 1, 2015.*

8 (b) *The disclosure shall include, but is not limited to, the*
9 *following:*

10 (1) *The names and addresses of all persons, except bona fide*
11 *employees on stated salaries, financially interested, either as*
12 *partners, associates, or profit sharers, in the person's business*
13 *enterprise, together with the amount of their respective interests.*

14 (2) *A declaration consenting to the designation by a court of*
15 *the commissioner as an agent available to accept service of*
16 *summons in any action against the person, if the person has left*
17 *the jurisdiction in which the action is commenced or otherwise*
18 *has become unavailable to accept service.*

19 (3) *A copy of the foreign labor contractor's disclosure as*
20 *required under Section 9998.2.5 to all foreign workers or*
21 *employees obtained by the person through the services of the*
22 *foreign labor contractor or its agents.*

23 (4) *Information about the steps the person has taken to verify*
24 *the accuracy of the information provided in the foreign labor*
25 *contractor's disclosure under Section 9998.2.5 and submitted*
26 *under paragraph (3).*

27 (c) *A person may not knowingly enter into an agreement for the*
28 *services of a foreign labor contractor that is not registered under*
29 *this chapter.*

30 (d) (1) *A person using or anticipating using the services of a*
31 *foreign labor contractor to obtain workers or employees shall*
32 *deposit with the commissioner a surety bond in an amount based*
33 *on the size of the person's annual payroll for all employees, as*
34 *follows:*

35 (A) *For payrolls up to five hundred thousand dollars (\$500,000),*
36 *a twenty-five-thousand-dollar (\$25,000) bond.*

37 (B) *For payrolls of five hundred thousand dollars (\$500,000)*
38 *to two million dollars (\$2,000,000), a fifty-thousand-dollar*
39 *(\$50,000) bond.*

1 (C) For payrolls greater than two million dollars (\$2,000,000),
2 a seventy-five-thousand-dollar (\$75,000) bond.

3 (2) If the person has been the subject of a final judgment in a
4 year in an amount equal to that of the bond required, that person
5 shall be required to deposit an additional bond within 60 days.
6 The bond shall be payable to the people of the State of California
7 and shall be conditioned on the person complying with all the
8 terms and provisions of this chapter and paying all damages
9 occasioned to any person by failure to do so, or by any violation
10 of this chapter, or false statements or misrepresentations made in
11 complying with this section. The bond shall also be payable for
12 interest on wages and for any damages arising from violation of
13 applicable orders of the Industrial Welfare Commission, and for
14 any other monetary relief awarded to a foreign worker as a result
15 of a violation of law by the person.

16 SEC. 6. Section 9998.2.5 is added to the Business and
17 Professions Code, to read:

18 9998.2.5. (a) A foreign labor contractor shall ascertain and
19 disclose in writing to each foreign worker who is recruited for
20 employment in English and in the primary language of the foreign
21 worker being recruited, at the time of the foreign worker's
22 recruitment, the following information:

23 (1) The identity of the employer and the identity of the person
24 conducting the recruiting on behalf of the employer, including any
25 subcontractor or agent involved in the recruiting.

26 (2) A signed copy of the work contract, including all assurances
27 and terms and conditions of employment, from the prospective
28 employer for whom the foreign worker is being recruited, including
29 the compensation to be paid, the place and period of employment,
30 a description of the type and nature of employment activities, any
31 withholdings or deductions from compensation, and any penalties
32 for terminating employment.

33 (3) The type of visa under which the foreign worker is to be
34 employed, the length of time the visa is valid, and the terms and
35 conditions under which the visa will be renewed with a clear
36 statement of whether the employer will secure renewal of the visa
37 or if renewal must be obtained by the foreign worker, and any
38 expenses associated with securing or renewing the visa.

39 (4) An itemized list of any costs or expenses to be charged to
40 the foreign worker, including, but not limited to, the costs of

1 *housing or accommodation, transportation to and from the*
2 *worksite, meals, medical examinations, health care or safety*
3 *equipment costs, and any other costs, expenses, or deductions to*
4 *be charged the foreign worker.*

5 *(5) A statement, in a form specified by the Labor Commissioner,*
6 *that does each of the following:*

7 *(A) States that no foreign labor contractor, or agent or employee*
8 *of a foreign labor contractor, can lawfully assess any fee, including*
9 *visa fees, processing fees, transportation fees, legal expenses,*
10 *placement fees, and other costs to a foreign worker for employment*
11 *services, and that the employer may bear the costs or fees for the*
12 *foreign labor contractor, but that these fees cannot be assessed to*
13 *the foreign worker.*

14 *(B) Explains that no additional requirements or changes may*
15 *be made from the terms of the contract originally signed by the*
16 *foreign worker, unless the foreign worker is provided at least 48*
17 *hours to review and consider the additional requirements or*
18 *changes and the foreign worker gives specific consent, voluntarily*
19 *and without threat of penalty, to each additional requirement or*
20 *change.*

21 *(C) Describes the protections afforded the foreign worker by*
22 *this chapter and by the federal Trafficking Victims Protection Act*
23 *of 2000 (Division A, Public Law 106-386), as amended, and any*
24 *applicable guest worker program, including relevant information*
25 *about the procedure for filing a complaint under this chapter, and*
26 *the telephone number for the national human trafficking resource*
27 *center hotline.*

28 *(6) Any education or training to be provided or required,*
29 *including the nature, timing, and cost of training and the person*
30 *who will pay training costs, whether the training is a condition of*
31 *employment, continued employment, or future employment, and*
32 *whether the foreign worker will be paid or remunerated during*
33 *the training period, including the rate of pay or remuneration.*

34 *(7) Any other information that the commissioner may require*
35 *by regulation.*

36 *(b) A foreign labor contractor, or the agent, subcontractor, or*
37 *employee of a foreign labor contractor, or a person using the*
38 *services of a foreign labor contractor to obtain foreign workers*
39 *or employees, may not assess any fee, including, but not limited*
40 *to, visa fees, processing fees, transportation fees, legal expenses,*

1 *placement fees, and other costs, to a foreign worker for employment*
2 *services.*

3 *(c) A foreign worker may not be required to pay any costs or*
4 *expenses that are not customarily assessed against all workers*
5 *similarly employed. No costs or expenses shall be required to be*
6 *paid by the foreign worker prior to the commencement of work.*
7 *The amount charged for providing housing to the foreign worker*
8 *shall be limited to market rate for similar housing.*

9 *SEC. 7. Section 9998.6 of the Business and Professions Code*
10 *is amended to read:*

11 *9998.6. No-A person shall take may not intimidate, threaten,*
12 *restrain, coerce, discharge, or in any-action manner discriminate*
13 *against a foreign worker or a member of his or her family in*
14 *retaliation for the foreign worker's exercise of any right under this*
15 *chapter.*

16 *SEC. 8. Section 9998.8 of the Business and Professions Code*
17 *is amended to read:*

18 *9998.8. (a) Any-A person who violates this chapter or who*
19 *causes or induces another to violate this chapter is guilty of a*
20 *misdemeanor punishable by a fine of not more than one thousand*
21 *dollars (\$1,000), or imprisonment in the county jail for not more*
22 *than six months, or both.*

23 *(b) A person who violates any provision of this chapter shall*
24 *be subject to a civil penalty of no less than one thousand dollars*
25 *(\$1,000) and no more than twenty-five thousand dollars (\$25,000)*
26 *per violation, in addition to any other civil remedies available to*
27 *the Labor Commissioner or an aggrieved person.*

28 ~~*(b) Any*~~

29 *(c) The commissioner or a person aggrieved by a violation of*
30 *this chapter may bring an action for injunctive relief or damages,*
31 *or both. If the person aggrieved prevails on the action, this person*
32 *shall recover damages, costs, and reasonable attorney's fees, but*
33 *in no case shall recovery be less than five hundred dollars (\$500).*
34 *do all of the following:*

35 *(1) Bring an action for injunctive relief against a person who*
36 *violates this chapter and, upon prevailing, recover costs and*
37 *reasonable attorney's fees.*

38 *(2) Bring an action for damages, against a person who violates*
39 *this chapter to recover the greater of all of his or her actual*
40 *damages or five hundred dollars (\$500) per employee per violation*

1 *for an initial violation, and one thousand dollars (\$1,000) per*
2 *employee for each subsequent violation, and, upon prevailing in*
3 *an action brought pursuant to this section, recover costs and*
4 *reasonable attorney's fees.*

5 *(3) Enforce the liability on the bonds required under Section*
6 *9998.1.5 or 9998.2.*

7 *(d) Foreign labor contractors and those persons using their*
8 *services to obtain foreign workers or employees are jointly and*
9 *severally liable for violations of this chapter.*

10 *(e) Nothing in this section shall be construed to preempt or alter*
11 *any other rights or remedies, including any causes of action,*
12 *available under any other federal or state law.*

13 *SEC. 9. Section 9998.10 is added to the Business and*
14 *Professions Code, to read:*

15 *9998.10. The Labor Commissioner and the deputies and*
16 *representatives authorized by the commissioner in writing may*
17 *take assignments of actions on the bonds required under Section*
18 *9998.1.5 or 9998.2 by aggrieved persons and may prosecute the*
19 *actions on behalf of persons who, in the judgment of the*
20 *commissioner, are financially unable to employ counsel, in the*
21 *same manner that claims are prosecuted under Section 98 of the*
22 *Labor Code.*

23 *SEC. 10. Section 9998.11 is added to the Business and*
24 *Professions Code, to read:*

25 *9998.11. A person who, upon information and belief, claims*
26 *a violation of this chapter has been committed may bring a civil*
27 *action for injunctive relief on behalf of the general public and,*
28 *upon prevailing, shall recover reasonable attorney's fees and*
29 *costs.*

30 *SEC. 11. No reimbursement is required by this act pursuant*
31 *to Section 6 of Article XIII B of the California Constitution because*
32 *the only costs that may be incurred by a local agency or school*
33 *district will be incurred because this act creates a new crime or*
34 *infraction, eliminates a crime or infraction, or changes the penalty*
35 *for a crime or infraction, within the meaning of Section 17556 of*
36 *the Government Code, or changes the definition of a crime within*
37 *the meaning of Section 6 of Article XIII B of the California*
38 *Constitution.*

39 ~~*SECTION 1. It is the intent of the Legislature to enact*~~
40 ~~*legislation aimed at eradicating slavery and human trafficking.*~~

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